

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

KAW NATION, OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 06-cv-01437-W
	)	
KENNETH L. SALAZAR,	)	Senior Judge Lee R. West
Secretary of the Interior;	)	
RAY A. JOSEPH, JR.,	)	
Acting Special Trustee,	)	
Office of the Special Trustee for	)	
American Indians; and	)	
TIMOTHY F. GEITHNER,	)	
Secretary of the Treasury,	)	
	)	
Defendants.	)	
_____	)	

**JOINT STATUS REPORT**

Pursuant to this Court's September 9, 2011, Order, ECF No. 79, Plaintiff Kaw Nation, Oklahoma, and Defendants Kenneth L. Salazar, Ray A. Joseph, Jr., and Timothy F. Geithner (collectively, the Parties) submit the following Joint Status Report.

1. As this Court is aware, Plaintiff has filed a companion case in the United States Court of Federal Claims (CFC), *Kaw Nation, Oklahoma v. United States*, No. 06-cv-934-FMA (Fed. Cl. Dec. 29, 2006). At the Parties' request in that case, the CFC temporarily stayed that case, referred it to that court's alternative dispute resolution (ADR) pilot program, and assigned CFC Judge Eric G. Bruggink to serve as an ADR judge.

2. Since that time, the Parties in this case have been pursuing the CFC ADR process and aiming, *inter alia*, to explore the possibility of resolving Plaintiff's claims in the CFC case and in this case without the need for protracted litigation.

3. To assist them in resolving Plaintiff's claims in the two cases, the Parties had been pursuing informal discovery. In its October 14, 2010, Order, this Court directed the Parties to complete discovery on or before April 15, 2011. ECF No. 65. On April 15, 2011, Plaintiff made an unopposed motion to stay discovery. ECF No. 72. The Court granted that request. ECF No. 73.

4. Also in its October 14, 2010, Order, the Court directed the Parties to complete mediation on or before July 2, 2011. The Parties were not able to complete mediation by that deadline, and they have not sought an extension of the deadline. Nonetheless, the Parties have reaffirmed their commitment to working with Judge Bruggink to resolve Plaintiff's claims through the current ADR process, without undue litigation, if possible. In its September 9, 2011, Order, the Court recognized that a stay of the litigation was warranted and continued the stay. ECF No. 79.

5. As previously reported, the United States filed a Motion to Dismiss the claims in the CFC case. Since the last Joint Status Report, the Parties have completed briefing the motion, and the CFC has held oral argument. The United States filed a notice of clarification of its position on November 25, 2011. *Kaw Nation*, No. 06-cv-934-FMA (Fed. Cl.), ECF No. 92. The Parties are awaiting a decision by the Court.

**I. The Parties' ADR Activities Since the September 8, 2011, Joint Status Report**

6. The Parties' previous joint status reports have described certain informational briefings, meetings, conference calls, and other events in the ADR process between August 2010 and September 8, 2011, in which Judge Bruggink, the Parties' counsel, the Parties' representatives, or various combinations of those individuals have participated. *See, e.g.*, ECF Nos. 66, 76, 78. To the extent that the descriptions provide useful context or explanation for the Court's understanding of the following ADR activities, the Parties incorporate them here by reference.

7. As previously reported, the Parties have been exchanging offers to settle the claims in the case, and they have continued exchanging offers since the last joint status report. On September 29, 2011, Defendants sent a letter in response to the Kaw Nation's August 18, 2011, settlement letter. On October 21, 2011, the Kaw Nation sent a letter in response, and Defendants responded to that letter by sending another letter on December 21, 2011. As the Parties have been sending those letters, they have also been sending courtesy copies of those letters to Judge Bruggink. The Kaw Nation is currently evaluating Defendants' December 21, 2011, letter and determining the scope and substance of its response.

8. On January 12, 2012, Judge Bruggink held a conference with the Parties' counsel to discuss the next steps in the ADR process. In response to the Parties' request, Judge Bruggink stated that he would review the briefs or position papers that the Parties had submitted regarding a legal issue in Plaintiff's cases, as well as the Parties' written

responses to the judge's written questions, and that he would schedule another ADR conference call with the Parties' counsel at a later time to discuss his informal views on the issue.

## **II. Other Relevant Activity**

9. In addition to the ADR-related work described above, the Parties have been negotiating and continue to negotiate the terms and conditions of a joint stipulation and proposed order to protect the confidentiality of their ADR process. Upon completion, the Parties will submit that joint stipulation and proposed order to the Court for its review and determination.

## **III. Conclusion**

10. The Parties believe that the ADR informational briefings and sessions, the conference calls, the party-to-party discussions, and the settlement proposal and series of responses, to date, have advanced the Parties' efforts to resolve Plaintiff's claims without the need for undue litigation. The Parties remain committed to their efforts to reach a mutually agreeable resolution of Plaintiff's claims.

Respectfully submitted this 12th day of January 2012,

IGNACIA S. MORENO  
Assistant Attorney General

/s/ Eugene K. Bertman  
(Signed by filing attorney with written  
permission provided on January 12, 2012)  
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